

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

OLIVER UDEMBA,	)	
	)	
Plaintiff,	)	
v.	)	CIVIL ACTION NO: 05 CV 11161 RGS
	)	
CUMBERLAND FARMS, INC.	)	
AND EMILE C. TAYEH,	)	
	)	
Defendant.	)	

**APPLICATION OF DEFENDANT CUMBERLAND FARMS, INC.  
FOR AWARD OF FEES AND COSTS INCURRED IN FILING  
ITS SECOND MOTION TO COMPEL DISCOVERY, WITH INCORPORATED  
AFFIDAVIT OF FEES AND COSTS**

Defendant, Cumberland Farms, Inc. ("the Company") respectfully requests that the Plaintiff be ordered to reimburse it \$1,734.00 in attorneys' fees and costs which the Company incurred by the filing of its second Motion to Compel Discovery, in support whereof the Company states:

1. On January 17, 2006, the Company filed its first Motion To Compel Discovery in this case, and served a copy of the motion on Plaintiff. In its first motion to Compel, the Company sought an order requiring the Plaintiff "To serve answers to the Company's interrogatories, without objections, within ten (10) days". Plaintiff did not file any response to the Company's first Motion to Compel, and the Court granted that Motion on February 7, 2006.

2. On February 17, 2006, the Company filed its Second Motion To Compel Discovery in this case, in which it sought a further order requiring the Plaintiff to serve answers to the Company's Interrogatories, or face dismissal of the Complaint.

3. Plaintiff did not file any response to the second Motion to Compel, but on February 24, 2006, Plaintiff served the Company with his answers to Interrogatories.

Notwithstanding the Court's Order granting the Motion to Compel, Plaintiff asserted a number of objections to the Interrogatories.

4. On March 20, 2006, the Court granted the Company's second Motion to Compel.

5. The Company would not have incurred the expense of filing its Second Motion to Compel, if the Plaintiff had complied with the Court's February 7, 2006 order requiring him to serve his answers to the Interrogatories within 10 days.

6. By his signature below, the undersigned Philip J. Moss, counsel to Defendant Cumberland Farms, Inc., attests that the Company incurred attorneys' fees in the amount of \$912.00 representing 3.8 hours of his time, and costs for electronic research in the amount of \$822.00, for research, drafting and filing of the Company's second Motion to Compel in this case.

WHEREFORE, the Company respectfully requests that the Plaintiff be ordered to pay the Company a total of \$1,734.00 in attorneys' fees and costs within fourteen (14) days.

DATED at Portland, Maine this 21st day of March, 2006.

CUMBERLAND FARMS, INC.,

By its attorneys,

MOON, MOSS & SHAPIRO, P.A.

Ten Free Street

P. O. Box 7250

Portland, ME 04112-7250

(207) 775-6001

/s/ Philip J. Moss

Philip J. Moss BBO# 358020

**CERTIFICATE OF SERVICE**

I, Philip J. Moss, attorney for Cumberland Farms, Inc., hereby certify that a paper copy of the Application of Defendant Cumberland Farms, Inc. for Award of Fees and Costs Incurred in Filing Its Second Motion to Compel Discovery, with Incorporated Affidavit of Fees and Costs, electronically filed with the Clerk of Court using the ECF system, will be sent this date by first-class U.S. mail, postage prepaid to the following:

Aderonke O. Lipede, Esq.  
434 Massachusetts Avenue, Suite 401  
Boston, MA 02118  
(BBO # 567431)

Dated: March 21, 2006

/s/ Philip J. Moss  
Philip J. Moss, Esq., BBO# 358020  
MOON, MOSS & SHAPIRO, P.A.  
Ten Free Street  
P. O. Box 7250  
Portland, ME 04112-7250  
Tel: (207) 775-6001  
Fax: (207) 775-6407  
[pmoss@moonmoss.com](mailto:pmoss@moonmoss.com)